



**REQUEST FOR PROPOSALS
No. RFP-FTZ2009-01**

**SEALED OFFERS
FOR
HAWAII FOREIGN-TRADE ZONE INVENTORY PROCESSING SYSTEM
MAINTENANCE SERVICE
AT THE FOREIGN-TRADE ZONE**

**WILL BE RECEIVED UP TO 11:00 A.M. (HST) ON
JANUARY 13, 2010**

IN THE FOREIGN-TRADE ZONE BUSINESS OFFICE, 521 ALA MOANA BOULEVARD, SUITE 101, HONOLULU, HAWAII, 96813. DIRECT QUESTIONS RELATING TO THIS SOLICITATION TO DAVID SIKKINK, TELEPHONE (808) 586-2510, FACSIMILE (808) 586-2513, OR E-MAIL AT bids@FTZ9.org with 'HFTZIPS BID' IN THE SUBJECT LINE.

DOWNLOAD SOLICITATION from Website

Offeror is advised that if interested in responding to this solicitation, Offeror may choose to submit their offer from a downloaded document **provided** Offeror registers its company by fax or e-mail for this specific solicitation. If Offeror does not register its company, Offeror will not receive addenda, if any, and their offer may be rejected and not considered for award.

Registration or Request for Copy of Solicitation

Submit FAX or E-Mail to: FAX No.: (808) 586-2513
E-Mail Address: bids@FTZ9.org

Provide the following information:

- | | |
|--|-----------------------|
| ⊕ Name of Company | ⊕ Mailing Address |
| ⊕ Name of Contact Person | ⊕ Telephone Number |
| ⊕ Facsimile Number | ⊕ Solicitation Number |
| ⊕ FedEx (or equivalent) account number (document will be sent by U.S. Postal Service first class mail if this is not provided) | |

TABLE OF CONTENTS

	PAGE NO.
1. INTRODUCTION AND KEY DATES	4
1.01 TERMS AND ACRONYMS USED	4
1.02 INTRODUCTION	5
1.03 RFP SCHEDULE AND SIGNIFICANT DATES	5
2. BACKGROUND AND SCOPE OF WORK	6
2.01 PROJECT OVERVIEW	6
2.02 PROJECT GOALS	6
2.03 DESCRIPTION OF REQUESTED SERVICES	6
2.04 SCOPE OF WORK	7
2.05 TIMELINE FOR SERVICES	7
2.06 COMPENSATION	7
2.07 OFFEROR EXPERIENCE AND CAPABILITIES	8
3. PROPOSAL FORMAT AND CONTENT	9
3.01 INTRODUCTION	9
3.02 EXCEPTIONS	11
4. EVALUATION CRITERIA	12
5. SPECIAL PROVISIONS	13
5.01 SCOPE	13
5.02 RESPONSIBILITY OF OFFERORS	13
5.03 PREFERENCES	16
5.04 SMALL BUSINESS SET-ASIDE PREFERENCE	16
5.05 MEANING OF REPRESENTATION BY OFFEROR & PROTEST AGAINST STATUS	17
5.06 UTILIZATION OF SMALL BUSINESS CONCERNS	17
5.07 OFFEROR QUALIFICATIONS	18
5.08 TERM OF CONTRACT	18
5.09 OFFICIAL CONTACT PERSON	19
5.10 OVERVIEW OF RFP PROCESS	19
5.11 CONFIDENTIAL INFORMATION	20
5.12 REQUIRED REVIEW	21
5.13 QUESTIONS PRIOR TO OPENING OF PROPOSAL	21
5.14 OFFEROR ACCEPTANCE PERIOD	21
5.15 PROPOSAL AS PART OF THE CONTRACT	21
5.16 PROTEST	22
5.17 GOVERNING LAW; COST OF LITIGATION	22
5.18 SUBMISSION OF PROPOSAL	22
5.19 PROPOSAL PREPARATION	23
5.20 PRICING	24

5.21	PROPOSAL OPENING	24
5.22	EVALUATION OF PROPOSALS	24
5.23	DISCUSSION WITH PRIORITY LISTED OFFERORS	25
5.24	CANCELLATION OF RFP AND PROPOSAL REJECTION	25
5.25	DEBRIEFING	25
5.26	DISQUALIFICATION OF PROPOSALS	25
5.27	SPECIAL CONDITIONS	26
5.28	CONTRACT EXECUTION	26
5.29	PAYMENT	27
5.30	AWARD OF CONTRACT	27
5.31	NOTICE TO PROCEED	27
5.32	INVOICING	27
5.33	SUBCONTRACTORS	27
5.34	NON-DISCRIMINATION	27
5.35	CONFLICT OF INTERESTS	28
5.36	WAIVER	28
5.37	SEVERABILITY	28
5.38	CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS	28
5.39	LIABILITY INSURANCE	28
6.	PROPOSAL	31
6.01	TRANSMITTAL LETTER	31
6.02	OFFEROR'S LEGAL LICENSE AND IDENTIFICATION NUMBERS	33
6.03	PREFERENCES	33
6.04	SMALL BUSINESS PROGRAM REPRESENTATIONS	34
6.05	SMALL BUSINESS QUALIFICATION QUESTIONNAIRE	35
6.06	CORPORATE RESOLUTION	38
7.	ATTACHMENTS	39
	OFFER FORM OF-1	Attachment 1
	OFFER FORM OF-2	Attachment 2
	CERTIFICATE FOR FINAL PAYMENT (SPO FORM-22)	Attachment 3
	GENERAL CONDITIONS	Attachment 4

SECTION ONE
INTRODUCTION AND KEY DATES

1.01 TERMS AND ACRONYMS USED THROUGHOUT THE SOLICITATION

Foreign-Trade Zone Business Office	=	Foreign-Trade Zone (FTZ) Business Office, and the entity for which this solicitation is issued. Located at 521 Ala Moana Boulevard, Suite 101, Honolulu, HI 96813
Contact Person	=	Official Contact Person, as identified in Section 5.09, Special Provision, of this RFP
Contractor	=	The Offeror awarded a contract under this RFP
CPO	=	Chief Procurement Officer
State	=	State of Hawaii, including each department and political subdivision
Procurement Officer	=	The State of Hawaii Department of Business, Economic Development, and Tourism, Director or the Director's delegated Procurement Officer
BAFO	=	Best and Final Offer
DBEDT	=	Department of Business, Economic Development, and Tourism
HAR	=	Hawaii Administrative Rules
HRS	=	Hawaii Revised Statutes
RFP	=	Request for Proposal
GC	=	General Conditions, AG-008
GET	=	General Excise Tax
Offeror	=	Any individual, partnership, firm, corporation, joint venture, or representative or agent submitting an offer in response to this solicitation.

1.02 INTRODUCTION

Pursuant to the Hawaii Public Procurement Code, Chapter 103D, Hawaii Revised Statutes, the State of Hawaii Department of Business, Economic Development, and Tourism (DBEDT) Foreign-Trade Zone (FTZ) is soliciting proposals to maintain the Hawaii Foreign-Trade Zone Information Processing System (HFTZIPS) IBM AS/400 and IBM Series i5 mini-computers.

The purpose is to obtain maintenance service for the Hawaii Foreign-Trade Zone Information Processing System IBM mini-computer and software.

1.03 RFP SCHEDULE AND SIGNIFICANT DATES

The schedule set out herein represents the State's best estimate of the schedule that will be followed. All times indicated is Hawaii Standard Time (HST). If a component of this schedule, such as "Proposal Due" date is delayed, the rest of the schedule will likely be shifted by the same number of days. The approximate schedule is as follows:

Advertising of Request for Proposals	December 10, 2009
Pre-Proposal Conference Meeting Non-Mandatory	December 17, 2009 at 10:00 AM, Foreign-Trade Zone Building, Room 258, 521 Ala Moana Blvd, Pier 2. Honolulu, Hawaii.
Deadline to Submit Written Questions	December 23, 2009
State's Response to Written Questions	December 30, 2009
Proposals Due and Opened	January 13, 2010
Proposal Evaluations	On or before February 1, 2010
Discussion with Priority Listed Offerors (if necessary)	To be scheduled
Best and Final Offer (if necessary)	To be scheduled
Contract Start Date	As determined by the Notice to Proceed

SECTION TWO BACKGROUND AND SCOPE OF WORK

2.01 PROJECT OVERVIEW

The Foreign-Trade Zone (FTZ) (hereinafter referred to as “STATE”) is a State facility whose mission is to increase the amount of international trading activity in Hawaii, thereby increasing employment opportunities for the people of Hawaii. We do this by encouraging manufacturing, stimulating capital investment, generating employment opportunities, and facilitating exports of locally manufactured goods by reducing barriers and costs associated with international trade. The Foreign-Trade Zone is a seven-acre facility located at Pier 2 containing over 40 office suites and a federally bonded warehouse.

2.02 PROJECT GOALS

The purpose of this solicitation is to obtain maintenance service for the Hawaii Foreign-Trade Zone Information Processing System (HFTZIPS) mini-computers and software.

2.03 DESCRIPTION OF REQUESTED SERVICES

FTZ currently has two IBM mini-computers that run a custom software package known as the Foreign-Trade Zone Information Processing System (HFTZIPS). FTZ currently has a five year operating system software and hardware maintenance agreement with IBM for the IBM Series i5 mini-computer. FTZ also has a five year hardware maintenance agreement with IBM for the AS/400 mini-computer. The objective of this project is to ensure that the HFTZIPS software package runs properly on the two mini-computers.

This system contains records of all transactions which take place at the FTZ including inventory management for the warehouse goods, financial management of the FTZ’s activities, and statistical reports on cargo received and distributed, accounts receivable, payments overdue, etc. Many of these transactions provide reports needed by the Department of Homeland Security’s U.S. Customs and Border Protection staff and may be audited at any time by the federal government. Other reports generated are used by the customers to actively determine the number and type of items they have stored in the FTZ’s bonded warehouse. Accounting reports required by the Department of Economic Development and Tourism and delinquent payment reports required by the Department of the Attorney General are also compiled from the system’s records. The system allows the FTZ to maintain accurate and up-to-date records of all transactions with minimal staff. Both hardware and software must continually be monitored and maintained to ensure the systems are operating at optimal levels and to reduce the chance of a failure resulting in loss of critical data.

2.04 SCOPE OF WORK

The CONTRACTOR shall be responsible for performing the following services. CONTRACTOR shall:

1. Provide on-going application and systems maintenance of the HFTZIPS and its related modules and operating features.
2. Provide troubleshooting and maintenance of the IBM AS/400 and IBM Series i5 system software and hardware to include network peripheral equipment related to the operations and connectivity of the IBM AS/400 and IBM Series i5 systems.
3. Provide installation and configuration of any system replacement parts or software updates and upgrades.
4. Ensure all existing maintenance contracts are up-to-date and enforced.
5. Be able to provide a minimum of twelve (12) hours of service per month.
6. Submit a quarterly report with invoice for payment.

2.05 TIMELINE FOR SERVICES

The term of any Contract awarded under this solicitation shall be twelve (12) month unless sooner terminated or extended as hereinafter provided.

The Contract may be extended without the necessity of re-soliciting proposals, for one (1) or two (2) additional twelve (12)-month periods. Any extension(s) shall be mutually agreed upon in writing at least thirty (30) days prior to expiration, provided the following:

1. CONTRACTOR satisfactorily provides the services requested during the prior Contract term(s);
2. Funds have been appropriated and are available to pay for the services;
3. The FTZ (STATE) wishes to exercise its option to extend the Contract;
4. Contract price remains the same or lower than the initial bid price, except for any allowable increase relate to increased wages of public employees performing similar work.

2.06 COMPENSATION

1. Award shall be based on the evaluation criteria herein to include a firm, fixed fee. Notwithstanding that, the Offeror shall submit a budget with his or her proposal with an hourly rate and a total not-to-exceed amount for services to be rendered under this solicitation.
2. Payment to the CONTRACTOR shall be made on a quarterly basis and only upon presentation of an original invoice submitted by the CONTRACTOR. Payment will

be made in accordance with the predetermined progress payments contingent upon STATE's approval of specified deliverables. Invoice shall be submitted within twenty (20) working days following the end of each quarter in which the services were provided. Ending dates for each quarter are, March 31, June 30, September 30, and December 31.

3. Proposals shall be priced and shall include a budget in accordance with Offer Form OF-2 on Attachment 2 in Section Seven.
4. Awardee shall be required to obtain a current tax clearance from the State of Hawaii Department of Taxation and the Internal Revenue Service prior to entering into a Contract with the STATE and again to receive final payment.
5. If any work is not in full compliance with these specifications, the CONTRACTOR shall make any and all necessary corrections to the full satisfaction of the STATE and at no additional cost to the STATE. The CONTRACTOR shall perform corrective work within the period allowed by the Officer-In-Charge (OIC).

2.07 OFFEROR EXPERIENCE AND CAPABILITIES

Offerors should document, demonstrate, and/or describe in detail how they meet the desired qualifications including the scope of their work experience. Offerors will be awarded less than the maximum number of points for experience if they fail to meet the following desired qualifications.

1. Four years experience maintaining IBM AS/400 and/or Series i5 systems.
2. Four years experience working with state government in computer system maintenance.
3. Able to pass a background check through the U.S. Department of Homeland Security.

SECTION THREE PROPOSAL FORMAT AND CONTENT

3.01 INTRODUCTION

One of the objectives of the RFP is to make proposal preparation easy and efficient, while giving Offerors ample opportunity to highlight their proposals.

When an Offeror submits a proposal, it shall be considered a complete plan for accomplishing the task described in this RFP and any supplemental tasks the Offeror has identified as necessary to successfully complete the obligations outlined in this RFP. There is no intention to limit the content of a proposal, and an Offeror may include additional information if so desired.

The proposal shall describe in detail the Offeror's ability and availability to meet the goals and objectives of the RFP as stated in **Section 2.04 Scope of Work**.

Offeror's proposal must:

1. Include a transmittal letter to confirm that the Offeror shall comply with the requirements, provisions, terms, and conditions specified in this RFP, **Section 6.01**;
2. Include a properly signed and executed Offer Form page OF-1 (Section 7, Attachment 1); and
3. Provide all of the information requested in the RFP and organize them into sections with tabs separating each of the following areas as described below. Each section must be addressed individually and pages must be numbered.

a. Include all of Section 6.

- 1) Identify the title and number of this RFP.
- 2) Include the complete name of the Offeror's firm and its address.
- 3) Include the name, mailing address, telephone number, and facsimile number of the person the STATE should contact regarding Offeror's proposal.
- 4) Include State of Hawaii General Excise Tax License Number and Federal Taxpayer Identification Number.
- 5) Include Type of Organization.
- 6) Include Preferences.

- 7) Include Small Business Program Representations.
 - 8) Include Qualification Questions.
 - 9) Include Corporate Resolution.
 - 10) Identify the name(s) of any subcontractor Offeror proposes to use.
- b. Proposal including an overall strategy.** Proposal should include a work and task plan for successfully fulfilling their obligations to this contract including an overall strategy as well as expected results and possible shortfalls.
- c. Experience and Capabilities.**
- 1) Document and describe in detail how Offeror meets experience and capabilities listed in **Section 2.07, Offeror Experience and Capabilities**. Include the identification of the Project Manager and/or principal contact with the Foreign-Trade Zone if selected for this project. Include a brief resume and project management experience.
 - 2) A representative listing of projects of a similar nature on which the firm has been engaged. Please highlight any previous work conducted in the State of Hawaii.
 - 3) Reference information from persons for whom the Offeror has successfully provided similar services within the past four (4) years, including the name, titles, organizations, telephone numbers, email and postal addresses of a contact person for each reference, and a brief outline of the nature of the services and deliverables provided.
 - 4) Provide a summary listing of judgments or pending lawsuits or actions, or adverse contract actions, including termination(s), suspension, imposition of penalties, or other actions relating to failure to perform or deficiencies in fulfilling contractual obligations against your firm. If non, so state.
- d. Cost for services to be performed as listed under Section 2.04, Scope of Work.** Please provide a breakdown of cost by task. See **Section 7, Attachment 2, Offer Form OF-2**.

The sections are primarily designed to provide information necessary for the STATE to evaluate offers pursuant to Section Four – Evaluation Criteria of this RFP. Offeror is advised to review the section and to provide all information necessary to allow the STATE to evaluate its proposal based on the stated criteria.

3.02 EXCEPTIONS

Offeror shall list any exceptions taken to the terms, conditions, specifications, or other requirements listed herein. Offeror shall reference the RFP section where exception is taken, a description of the exception taken, and the proposed alternative, if any.

SECTION FOUR EVALUATION CRITERIA

Evaluation criteria and the associated points are listed below. The award will be made to the responsive, responsible Offeror whose proposal is determined to be acceptable to the STATE based on evaluation criteria listed in this section.

The total number of points used to score the proposals is 100.

1. Qualifications and Experience. (50 points)
 - a. Experience maintaining and updating IBM AS/400 and/or Series i5 systems.
 - b. Ability to respond to meet the guidelines and conditions set forth in this RFP.
2. Cost of Services. Comprehensiveness and reasonableness of quotation and proposal to include price. (40 points)
3. References. Including record of performance with other clients. (10 points)

SECTION FIVE SPECIAL PROVISIONS

5.01 SCOPE

The furnishing of services to successfully maintain IBM AS/400 and IBM Series i5 systems for DBEDT/Foreign-Trade Zone Division shall be in accordance with this RFP, including the special provision in this section, the Scope of Work specified herein, and the STATE's General Conditions (AG-008 Rev. 4/15/2009).

A copy of this RFP may be obtained at the Foreign-Trade Zone Business Offices, 521 Ala Moana Boulevard, Suite 101, Honolulu, Hawaii, 96813. Request for Proposal (RFP) documents may be obtained from said office between the hours of 8:00 a.m. to 3:30 p.m., Monday through Friday, except for State holidays or you may download from www4.state.hi.us/bidapps or www.hawaii.gov/dbedt/info/bidfiles. All interested parties must register with said office at the time the RFP documents are requested. **PLEASE NOTE: REGISTRATION IS MANDATORY TO RECEIVE ANY ADDENDUM TO THIS SOLICITATION.**

Proposals must be submitted on DBEDT proposal forms **with an original signature.** If possible, blue ink is preferred.

5.02 RESPONSIBILITY OF OFFERORS

Offeror is advised that prior to award of a contract under this solicitation, Offeror shall furnish proof of compliance with the requirements of section 103D-310(c), HRS:

- a. Chapter 237, tax clearance;
- b. Chapter 383, unemployment insurance;
- c. Chapter 386, workers' compensation;
- d. Chapter 392, temporary disability insurance;
- e. Chapter 393, prepaid health care; and
- f. Section 103D-310 (c), Certificate of Good Standing (for entities doing business in the State).

1. **Hawaii Compliance Express.** An Offeror may collectively apply for these certificates through the Hawaii Compliance Express (HCE). The HCE allows businesses to register online through a simple wizard interface at <http://vendors.ehawaii.gov/hce/splash/welcome.html> to acquire a "Certificate of Vendor Compliance." The HCE provides current compliance status as of the issuance date. The "Certificate of Vendor Compliance," indicating that the vendor's status is compliant with the requirements of HRS Section 103D-310(c), shall be accepted for both contracting purposes and final payment. Vendors that elect to use the new HCE services will be required to pay an annual fee of \$12.00 to

the Hawaii Information Consortium, LLC (HIC). **Vendors choosing not to participate in the HCE program will be required to provide the paper certificates as instructed in the sub-sections 2, 3, 4 that follow.**

2. **HRS Chapter 237 tax clearance requirement for award.** Instructions are as follows:

Pursuant to HRS §103D-328, the successful Offeror shall be required to submit a tax clearance certificate issued by the Hawaii State Department of Taxation (DOTAX) and the Internal Revenue Service (IRS). The certificate shall have an original green certified copy stamp and shall be valid for six (6) months from the most recent approval stamp date on the certificate. It must be valid on the date it is received by the FTZ.

The tax clearance certificate shall be obtained on DOTAX “Tax Clearance Application” Form A-6 (Rev. 2006), which is available at the DOTAX and IRS offices in the State of Hawaii or the DOTAX website, and by mail or fax:

DOTAX Website, Forms & Information: http://www.state.hi.us/tax/a1_1alphalist.htm
DOTAX Forms by Fax/Mail: (808) 587-7572
1 (800) 222-7572

Completed tax clearance applications may be mailed, faxed, or submitted in person to the DOTAX, Taxpayer Services Branch, to the address listed on the application. Facsimile numbers are:

DOTAX: (808) 587-1488
IRS: (808) 539-1573

The application for the clearance is the responsibility of the Offeror, and must be submitted directly to the DOTAX or IRS and not to the FTZ. However, the tax clearance certificate shall be submitted to the FTZ.

3. **HRS Chapters 383 (Unemployment Insurance), 386 (Workers’ Compensation), 392 (Temporary Disability Insurance), and 393 (Prepaid Health Care) requirements for award.** Instructions are as follows:

Pursuant to HRS §103D-310(c), the successful Offeror shall be required to submit a certificate of compliance issued by the Hawaii State Department of Labor and Industrial Relations (DLIR). The certificate is valid for six (6) months from the date of issue and must be valid on the date it is received by the FTZ. A photocopy of the certificate is acceptable to the FTZ.

The certificate of compliance shall be obtained on the State of Hawaii, DLIR *APPLICATION FOR CERTIFICATE OF COMPLIANCE WITH HAR SECTION 3-122-112*, “Form LIR#27 which is available at <http://hawaii.gov/labor/forms/DCD->

[LIR27.pdf](#), or at the Neighbor Island DLIR District Offices. The DLIR will return the form to the Offeror who in turn shall submit it to the FTZ.

The application for the certificate is the responsibility of the Offeror, and must be submitted directly to the DLIR and not to the FTZ. However, the certificate shall be submitted to the FTZ.

4. **Compliance with Section 103D-310 (c), HRS for an entity doing business in the State.** The successful Offeror shall be required to submit a CERTIFICATE OF GOOD STANDING (Certificate) issued by the State of Hawaii Department of Commerce and Consumer Affairs Business Registration Division (BREG). The Certificate is valid for six months from date of issue and must be valid on the date it is received by the FTZ. A photocopy of the Certificate is acceptable to the FTZ.

To obtain the Certificate, the Offeror must first be registered with BREG. A sole proprietorship, however, is not required to register with the BREG, and therefore not required to submit the certificate.

Online business registration and the Certificate are available at www.BusinessRegistrations.com. To register or to obtain a “Certificate of Good Standing” by phone, call (808) 586-2727 (Monday-Friday, 7:45 a.m. to 4:30 p.m., HST). Offerors are advised that there are costs associated with registering and obtaining the Certificate.

5. **Final Payment Requirements.** CONTRACTOR is required to submit a tax clearance certificate for final payment on the contract. A tax clearance certificate, not over two months old, with an original, green certified copy stamp must accompany the invoice for final payment on the contract.

In addition to a tax clearance certificate, an original “Certification of Compliance for Final Payment” (SPO Form-22), Attachment 3, will be required for final payment. A copy of the Form is also available at www.spo.hawaii.gov. Select “Forms for Vendors/Contractors” menu. Alternatively, a “Certificate of Vendor Compliance”, issued through the Hawaii Compliance Express system, shall be acceptable for final payment requirements.

6. **Timely Submission of all Certificates.** The above certificates should be applied for and submitted to the FTZ as soon as possible. If a valid certificate is not submitted on a timely basis for award of a contract, an offer otherwise responsive and responsible may not receive the award.

5.03 PREFERENCES

The following preferences shall apply to this solicitation. The evaluated price shall be based on application of these preferences in the order specified below:

1. In-State Contractor. Preference shall be given to Offerors within the State of Hawaii. Whenever an Offeror selects and qualifies for an in-state contractor preference, all prices from Offerors who do not select or qualify under the in-state contractor preference shall be increased by 5% for evaluation purposes. Offerors claiming this preference shall submit a tax clearance certified from the State of Hawaii, Department of Taxation with their proposal and must indicate a State of Hawaii business address.
2. Tax adjustment for tax exempt bidders. Where the Offeror is exempted from paying the applicable general excise tax and applicable use tax, the proposal price, for the purpose of determining the lowest price offer, shall be increased by the applicable retail rate of general excise tax and the applicable use tax. The contract amount of any contract awarded shall be the amount of the proposal price and shall not include the amount of the increase.
3. Reciprocal Preference. Resident Offerors of the State of Hawaii may be given a reciprocal preference equal to the preference that an out-of-state Offeror would be given in their own state. If the out-of-state Offeror's state has a preference comparable to a Hawaii preference, the reciprocal preference shall be equal to the amount the out-of-state preference exceeds the Hawaii preference.

5.04 SMALL BUSINESS SET-ASIDE PREFERENCE

NOTICE OF SMALL BUSINESS SET-ASIDE

1. Definition. "Small business concern," as used in this clause, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation;
2. General.
 - a. **Offers are solicited only from small business concerns. Offers received from concerns that are not small businesses shall be rejected.**

- b. Any award resulting from this solicitation will be made only to a small business concern.

5.05 MEANING OF REPRESENTATION BY OFFEROR & PROTEST AGAINST STATUS

1. To be eligible for award of this contract as a small business, Offeror must represent in good faith that it is a small business at the time of its written representation. The representation must reflect that Offeror meets the definition of a small business concern as stated in the solicitation. The Small Business Program Representations in Section 6 of this solicitation must be completed;
2. The procurement officer shall accept an Offeror's representation that it is a small business unless another Offeror challenges Offeror's small business representation to the contracting officer through the applicable protest procedures under HAR Chapter 126;
3. Upon receipt of a protest, the Chief Procurement Officer shall require the Offeror to provide proof of its status as an eligible small business Offeror;
4. If the Chief Procurement Officer determines that the Offeror has misrepresented its status as an eligible small business, the Chief Procurement Officer may disqualify the Offeror from the competition;
5. If the Chief Procurement Officer concludes the misrepresentation was not inadvertent and was intended to unfairly enable the Offeror to compete in a solicitation when it knew or should have known it was not eligible, the Chief Procurement Officer shall initiate debarment action under HAR Chapter 126;
6. Any time after Contract award, the procurement officer may question the small business representation of any Offeror and require the Offeror to confirm its represented size status and eligibility for award. If the procurement officer determines the Offeror misrepresented its size status, the procurement officer may terminate the Contract for cause and re-solicit unless the Chief Procurement Officer determines in writing that Contract termination would be detrimental to the interests of the State. The Chief Procurement Officer shall also determine whether to initiate debarment proceedings under HAR Chapter 126 based on the Offeror's misrepresentation of size status and eligibility.

5.06 UTILIZATION OF SMALL BUSINESS CONCERNS

1. It is the policy of the State of Hawaii that small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any state agency, including contracts and subcontracts for subsystems, assemblies, components, and related services. It is further the policy of the State of Hawaii that

its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns;

2. The CONTRACTOR hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The CONTRACTOR further agrees to cooperate in any studies or surveys as may be conducted by agencies of the State of Hawaii as may be necessary to determine the extent of the CONTRACTOR's compliance with this clause.
 - a. Definitions. As used in this solicitation, a small business is a firm which has **fewer than 500 employees and/or less than seven million dollars (\$7,000,000.00) in average annual receipts.**
 - b. Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern.

5.07 OFFEROR QUALIFICATIONS

Offeror shall meet all of the qualifications required by this RFP. Failure to meet the qualifications as specified in Section 2.07, Offeror Experience and Capabilities, will likely have an adverse affect on Offeror's proposal evaluation.

5.08 TERM OF CONTRACT

Successful Offeror shall be required to enter into a formal written contract to commence work on this project.

The initial term of the contract shall be for a twelve (12) month period commencing from the official date on the Notice to Proceed. The contract may be extended for up to one (1) or two (2) additional twelve (12) month periods, or any portion thereof, if mutually agreed upon in writing prior to contract expiration; provided, however, the contract price for the extended period shall remain the same or lower than the initial contract price, subject to any price increase allowed by the contract.

5.09 OFFICIAL CONTACT PERSON

The official contact person for all communication regarding the RFP is:

David Sikkink
Department of Business, Economic Development, and Tourism
Foreign-Trade Zone No. 9
521 Ala Moana Boulevard, Suite 101
Honolulu, Hawaii 96813
Telephone: (808) 586-2510
Fax: (808) 586-2513
Email: administration@ftz9.org

5.10 OVERVIEW OF THE RFP PROCESS

1. The RFP is issued pursuant to Subchapter 6 of HAR Chapter 3-122, implementing HRS Section 103D-303.
2. The procurement process begins with the issuance of the RFP and the formal response to any written questions or inquiries regarding the RFP. Changes to the RFP will be made only by Addendum.
3. Proposals shall not be opened publicly, but shall be opened in the presence of two (2) or more procurement officials. The register of proposals and Offerors' proposals shall be opened to public inspection after posting of the award.

All proposals and other material submitted by the Offerors become the property of the State and returned only at the State's option.

4. The Procurement Officer, or an evaluation committee selected by the Procurement Officer, shall evaluate the proposals in accordance with the evaluation criteria. The proposals shall be classified initially as acceptable, potentially acceptable, or unacceptable.
5. Proposals may be accepted on evaluation without discussion. However, if deemed necessary, prior to entering into discussion, a "priority list" of responsible Offerors submitting acceptable and potentially acceptable proposals shall be generated. The priority list may be limited to a minimum of three responsible Offerors who submitted the highest-ranked proposals. The objective of these discussions is to clarify issues regarding the Offeror's proposal before the Best and Final Offer (BAFO) is tendered.
6. If during discussion there is a need for any substantial clarification or change in the RFP, the RFP shall be amended by an addendum to incorporate such clarification or

change. Addenda to the RFP shall be distributed only to priority listed Offerors who submit acceptable or potentially acceptable proposals.

7. Following any discussions, Priority Listed Offerors will be invited to submit their BAFO, if required. The Procurement Officer or an evaluation committee reserves the right to have additional rounds of discussions with the Priority Listed Offerors prior to the submission of the BAFO.
8. The date and time of the Offerors to submit their BAFO, if any, is indicated in Section 1.03 RFP Schedule and Significant Dates. If Offeror does not submit a notice of withdrawal or a BAFO, the Offeror's immediate previous offer shall be construed as its BAFO.
9. After receipt and evaluation of the BAFOs in accordance with the evaluation criteria, in Section Four, the Procurement Officer or an evaluation committee will make its recommendation. The Procurement Officer will award the contract to the Offeror whose proposal is determined to be the most advantageous to the State taking into consideration price and the evaluation factors set forth in the evaluation criteria.
10. The contents of any proposal shall not be disclosed during the review, evaluation, discussion, or negotiation process. Once award notice is posted, all proposals, successful and unsuccessful, become available for public inspection. Those sections that the Offeror and the State agree are confidential and/or proprietary should be identified by the Offerors and shall be excluded from access.
11. The Procurement Officer or an evaluation committee reserves the right to determine what is in the best interest of the State for purposes of reviewing and evaluating proposals submitted in response to the RFP. The Procurement Officer or an evaluation committee will conduct a comprehensive, fair and impartial evaluation of proposals received in response to the RFP.
12. The RFP, any addenda issued, and the successful Offeror's proposal shall become a part of the contract. All proposals shall become the property of the State of Hawaii.

5.11 CONFIDENTIAL INFORMATION

If a person believes that any portion of a proposal, offer, specification, protest, or correspondence contains information that should be withheld as confidential, then the Procurement Officer named on the cover of this RFP should be so advised in writing and provided with justification to support the confidentiality claim. Price is not considered confidential and will not be withheld.

An Offeror shall request in writing nondisclosure of designated trade secrets or other proprietary data considered confidential. Such data shall accompany the

proposal, be clearly marked and shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal.

Pursuant to HAR Section 3-122-58, the head of the purchasing agency or a designee shall consult with the Department of the Attorney General and make a written determination in accordance with HRS Chapter 92F. If the request for confidentiality is denied, such information shall be disclosed as public information, unless the person appeals the denial to the Office of Information Practices in accordance with HRS Section 92F-42(12).

5.12 REQUIRED REVIEW

Offeror shall carefully review this solicitation for defects and questionable or objectionable matter. Comments and questions **must be made in writing and should be received by the FTZ prior to the deadline for written questions as stated in RFP Schedule and Significant Dates, and Official Contact Person.** This will allow issuance of any necessary corrections to the RFP. Any exceptions taken to the terms, conditions, specifications, or other requirements listed herein, must be listed in the Exceptions section of the Offeror's proposal, if the exception is unresolved by the Proposal Due date.

5.13 QUESTIONS PRIOR TO OPENING PROPOSALS

All questions must be submitted in writing and directed to David Sikkink, FTZ Business Manager, fax (808) 586-2513 or email: administration@ftz9.org. The State will respond to written questions by the date indicated in the RFP Schedule and Significant Dates, or as amended.

5.14 OFFER ACCEPTANCE PERIOD

The State's acceptance of offer, if any, will be made within sixty (60) calendar days after the opening of the proposals. Price quotes by the Offeror shall remain firm for the sixty (60) day period.

5.15 PROPOSAL AS PART OF THE CONTRACT

Part or all of this RFP and the successful proposal may be incorporated into the contract.

5.16 PROTEST

A protest shall be submitted in writing within five (5) working days after the aggrieved person knows or should have known of the facts giving rise thereto; provided that protest based upon the content of the solicitation shall be submitted in writing prior to the date

set for receipt of offers; further provided that a protest of an award or proposed award shall be submitted within five (5) working days after the posting of award of the contract.

The notice of award, if any, resulting from this solicitation shall be posted on the Procurement Reporting System, which is available on the State Procurement Office website: <http://www.hawaii.gov/spo2/source/>.

Any protest pursuant to §103D-701, HRS, and Section 3-126-3, HAR, shall be submitted in writing to the Department of Business, Economic Development, and Tourism, Foreign-Trade Zone No. 9, 521 Ala Moana Boulevard, Suite 101, Honolulu, Hawaii 96813.

5.17 GOVERNING LAW; COST OF LITIGATION

The validity of the Contract and any of its terms or provisions, as well as the rights and duties of the parties to the contract, shall be governed by the laws of the State of Hawaii.

Any action at law or equity to enforce or interpret the provisions of the contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.

In case the State shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with the Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the State, including attorneys' fees.

5.18 SUBMISSION OF PROPOSAL

The submission of a proposal shall constitute an incontrovertible representation by the Offeror of compliance with every requirement of the RFP, and that the RFP documents are sufficient in scope and detail to indicate and convey reasonable understanding of all terms and conditions of performance of the work.

Before submitting a proposal, each Offeror must:

1. Examine the solicitation documents thoroughly. Solicitation documents include this RFP, and attachments, plans referred to herein, and any other relevant documents.
2. Become familiar with State, local, and federal laws, statutes, ordinances, rules, and regulations that may in any manner affect cost, progress, or performance of the work.

The FTZ must receive sealed proposals no later than the date and time indicated in Section 1.03, RFP Schedule and Significant Dates. Timely receipt of proposals shall be evidenced by the date and time registered by the FTZ time clock stamp. Offers

received after the deadline shall be returned unopened. The FTZ's time clock shall serve as the official time.

5.19 PROPOSAL PREPARATION

1. **Offer Form, page OF-1.** See Attachment 1. Proposals shall be submitted using Offeror's exact legal name as registered with the Department of Commerce and Consumer Affairs, if applicable; and the Offeror shall indicate its exact legal name in the appropriate space on Offer Form OF-1. Failure to do so may delay proper execution of the contract.

The authorized signature on the first page of the Offer Form shall be an original signature; if possible blue ink is preferred. If unsigned or the affixed signature is a facsimile or a photocopy, the offer shall automatically be rejected unless accompanied by other material, containing an original signature, indicating the Offeror's intent to be bound.

2. **Offer Guaranty.** An offer guaranty is NOT required for this RFP.
3. **Tax Liability.** Work performed under this solicitation is a business activity taxable under HRS Chapter 237, and if applicable, taxable under HRS Chapter 238. Vendors are advised that they are liable for the Hawaii General Excise Tax (GET) and the applicable use tax. If, however, an Offeror is a person exempt by the HRS from paying the GET and therefore not liable for the taxes on this solicitation, Offeror shall state its tax exempt status and cite the HRS chapter or section allowing the exemption.
4. **Original Proposal and Copies to be Submitted.** Offeror shall submit one (1) original proposal marked "ORIGINAL" and **five (5) copies** of the original marked "COPY." It is imperative to note that the Offeror submit only one original and the required number of copies. DO NOT SUBMIT MORE THAN ONE ORIGINAL. The original proposal and five (5) copies of the proposal must be in a sealed envelope or box.

The outside cover of the package containing the offer should be marked:

SEALED PROPOSAL FOR DBEDT SUBMITTED IN RESPONSE TO

RFP-FTZ2009-01
DBEDT, State of Hawaii
Foreign-Trade Zone No. 9
521 Ala Moana Boulevard, Suite 101
Honolulu, Hawaii 96813

(Name, address, telephone number of Offeror)

Costs for developing the Proposal are solely the responsibility of the Offeror, whether or not any award results from this solicitation. The State of Hawaii will not reimburse such costs. Offeror is cautioned that illegible offers of any item(s) may be automatically rejected to avoid any errors in interpretation by the reviewers during the evaluation process.

5. All proposals become the property of the State of Hawaii.
6. Copies of all documents transmitted by Offerors via facsimile machines shall be limited to the modifications or withdrawal of an offer.

5.20 PRICING

Pricing shall be an all-inclusive fixed cost. These prices shall be inclusive of all federal, state and local taxes; and any and all expenses, required for the completion of the services to be performed as listed under Section 2.04, Scope of Work. **No other costs will be honored.**

5.21 PROPOSAL OPENING

Offeror proposals shall not be opened publicly, but shall be opened in the presence of two (2) or more procurement officials. The register of proposals and Offerors' proposals shall be open to public inspection upon posting of the award. All proposals and other material submitted by Offerors become the property of the State and may be returned only at the State's option.

5.22 EVALUATION OF PROPOSALS

The Procurement Officer, or an evaluation committee of at least three (3) State employees selected by the Procurement Officer shall evaluate the proposals. The evaluation will be based solely on the evaluation criteria set out in Evaluation Criteria of this RFP.

Proposals shall be classified initially as acceptable, potentially acceptable, or unacceptable.

Discussions may be conducted with priority-listed Offerors who submit proposals determined to be acceptable or potentially acceptable of being selected for award, but proposals may be accepted without discussions. The objective of these discussions is to clarify issues regarding the Offeror's proposals before the best and final offer, if necessary.

If numerous acceptable and potentially acceptable proposals are submitted, the evaluation committee may rank the proposals and limit the priority list to three responsive, responsible offerors who submitted the highest-ranked proposals.

5.23 DISCUSSION WITH PRIORITY LISTED OFFERORS

If requested by the State, priority listed Offerors shall have a discussion with the evaluation committee to discuss their proposal to ensure thorough, mutual understanding. The State in its sole discretion shall schedule the time and location for these discussions.

5.24 CANCELLATION OF RFP AND PROPOSAL REJECTION

The State reserves the right to cancel this RFP and to reject any and all proposals in whole or in part when it is determined to be in the best interest of the State, pursuant to HAR Sections 3-122-95 through 3-122-97.

The State shall not be liable for any costs, expenses, loss of profits or damages whatsoever, incurred by the Offeror in the event this RFP is cancelled or a proposal is rejected.

5.25 DEBRIEFING

Pursuant to Section 3-122-60, HAR, a debriefing is provided, if requested, to the non-selected Offerors to inform them of the basis for the source selection decision and contract award.

A written request for debriefing shall be made within three (3) working days after the posting of the award of the contract. The procurement officer or designee shall hold the debriefing within seven (7) working days to the extent practicable from the receipt date of the written request.

A protest by the requestor submitted pursuant to §103D-701, HRS, following a debriefing shall be filed within five (5) working days, as specific in §103D-303 (h), HRS.

5.26 DISQUALIFICATIONS OF PROPOSALS

The State reserves the right to consider as acceptable only those proposals submitted in accordance with all the requirements set forth in this RFP and which demonstrate an understanding of the scope of services. Any proposal offering any other set of terms and conditions contradictory of those included in the RFP may be disqualified without further notice.

5.27 SPECIAL CONDITIONS

1. All work performed and products developed pursuant to the Contract shall comply with all applicable State, county, and federal rules, codes, and guidelines.
2. The CONTRACTOR must assure and be responsible for the continuity of service activities in the event of staff illness, medical emergencies, vacancies, or other situations that result in program resources that are less than proposed and contracted for. The CONTRACTOR must not require or depend on the State's staff to provide services activities in the event that program resources are not available due to the above situations.
3. When a disagreement arises between the CONTRACTOR and the State in regards to the performance of specific service requirements within contract specifications, the wishes of the State shall prevail. Failure on the part of the CONTRACTOR to comply shall be deemed cause for corrective action and subject to contractual remedies.
4. STATE reserves the right to reduce, amend, or expand the "Scope of Services."

5.28 CONTRACT EXECUTION

Successful Offeror receiving award shall enter into a formal written contract. No performance or payment bond shall be required for the Contract.

No work is to be undertaken by the CONTRACTOR prior to the commencement date specified in the Notice to Proceed issued by the State upon execution of the contract by both parties. The State of Hawaii is not liable for any work, contract, costs, expenses, loss of profits, or any damages whatsoever incurred by the CONTRACTOR prior to the official commencement date.

If an option to extend is mutually agreed upon, the CONTRACTOR shall be required to execute a supplemental to the contract for the additional extension period.

5.29 PAYMENT

Section 103D-10, HRS, provides that the State shall have thirty (30) calendar days from receipt of invoice or satisfactory delivery of goods or performance to make payment. For this reason, the State will reject any proposal submitted with a condition requiring payment within a shorter period. Further the State will reject any proposal submitted with a condition requiring interest payments greater than that allowed by HRS Section 103-10, as amended.

The State will not recognize any requirement established by the CONTRACTOR and communicated to the State after award of the Contract, which requires payment within a shorter period or interest payment not in conformance with the law.

5.30 AWARD OF CONTRACT

The award will be made to the responsive, responsible Offeror whose proposal is determined to be the most advantageous to the State based on the evaluation criteria.

5.31 NOTICE TO PROCEED

Work will commence on the official commencement date specified in the Notice to Proceed.

5.32 INVOICING

CONTRACTOR shall submit an invoice with each request for payment. An original and three (3) copies of the invoice shall be submitted to:

Foreign-Trade Zone No. 9
521 Ala Moana Blvd, Suite 101
Honolulu, Hawaii 96813

Invoices should reference both the contract number and the RFP number.

5.33 SUBCONTRACTING

No work or services shall be subcontracted or assigned without the prior written approval of the State. No subcontract shall under any circumstances, relieve the CONTRACTOR of his/her obligations and liability under the Contract with the State.

5.34 NON-DISCRIMINATION

The CONTRACTOR shall comply with all applicable federal and State laws prohibiting discrimination against any person on the grounds of race, color, national origin, religion, creed, sex, age, sexual orientation, marital status, handicap, or arrest and court records in employment and any condition of employment with the CONTRACTOR or in

participation in the benefits of any program or activity funded in whole or in part by the State.

5.35 CONFLICTS OF INTEREST

The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR's performance of the contract.

5.36 WAIVER

The failure of the State to insist upon the strict compliance with any term, provision or condition of the contract shall not constitute or be deemed to constitute a waiver or relinquishment of the State's right to enforce the same in accordance with the contract.

5.37 SEVERABILITY

In the event that any provision of the Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of the Contract.

5.38 CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS

It has been determined that funds for the contract have been appropriated by a legislative body.

Therefore, Offeror, if awarded a contract in response to this solicitation, agrees to comply with HRS Section 11-205.5, which states that campaign contributions are prohibited from a State and county government CONTRACTOR during the term of the contract if the CONTRACTOR is paid with funds appropriated by a legislative body.

5.39 LIABILITY INSURANCE

The CONTRACTOR shall maintain in full force and effect during the life of this Contract, liability and property damage insurance to protect the CONTRACTOR and his subcontractors, if any, from claims for damages for personal injury, accidental death and property damage which may arise from operations under the Contract, whether such operations be by himself or by any subcontractor or anyone directly or indirectly employed by either of them. If any subcontractor is involved in the performance of the contract, the insurance policy or policies shall name the subcontractor as additional insured.

As an alternative to the CONTRACTOR providing insurance to cover operations performed by a subcontractor and naming the subcontractor as additional insured, CONTRACTOR may require subcontractor to provide its own insurance, which meets the requirements herein. It is understood that a subcontractor's insurance policy or policies are in addition to the CONTRACTOR's own policy or policies.

The following minimum insurance coverage limit(s) shall be provided by the CONTRACTOR, including its subcontractor(s) where appropriate.

<u>Coverage</u>	<u>Limits</u>
Commercial General Liability	\$1,000,000 limit pr occurrence for bodily injury and property damage / \$2,000,000 in the aggregate
Automobile Liability	\$1,000,000 each accident

Each insurance policy required by the contract, including a subcontractor's policy, shall contain the following clauses:

1. "This insurance shall not be canceled, limited in scope of coverage or non-renewed until after 30 days written notice has been given to the State of Hawaii, Department Business, Economic Development, and Tourism, Foreign-Trade Zone No. 9, 521 Ala Moana Boulevard, Suite 101, Honolulu, Hawaii 96813."
2. "The State of Hawaii is added as an additional insured as respect to operations performed for the State of Hawaii."
3. "It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy."

The minimum insurance required shall be in full compliance with the Hawaii Insurance Code throughout the entire term of the Contract, including supplemental agreements.

Upon CONTRACTOR's execution of the contract, the CONTRACTOR agrees to deposit with the State of Hawaii certificate(s) of insurance necessary to satisfy the State that the insurance provisions of the Contract have been complied with and to keep such insurance in effect and the certificate(s) therefor on deposit with the State during the entire term of the Contract, including those of its subcontractor(s), where appropriate. Upon request by the State, CONTRACTOR shall be responsible for furnishing a copy of the policy or policies.

Failure of the CONTRACTOR to provide and keep in force such insurance shall be regarded as material default under the contract, entitling the State to exercise any or all of the remedies provided in the Contract for a default of the CONTRACTOR.

The procuring of such required insurance shall not be construed to limit CONTRACTOR's liability hereunder nor to fulfill the indemnification provisions and requirements of the Contract. Notwithstanding said policy or policies of insurance, CONTRACTOR shall be obliged for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with the Contract.

SECTION SIX PROPOSAL

6.01 TRANSMITTAL LETTER

Hawaii Foreign-Trade Zone No. 9
521 Ala Moana Boulevard, Suite 101
Honolulu, HI 96813

The undersigned has carefully read and understands the terms, conditions and requirements specified in the Request for Proposal attached hereto and hereby submit the following proposal to perform the work specified herein, all in accordance with the true intent and meaning thereof.

The undersigned further understands and agrees to the following:

- That by submitting this proposal, the undersigned is declaring that this proposal is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contracts;
- That by submitting this proposal, the undersigned is declaring that the proposal is being made without collusion with any other person, firm or corporation;
- That the Director of the Department of Business, Economic Development, and Tourism or the Director's delegated Procurement Officer reserves the right to cancel the Request for Proposal at any time and all proposals may be rejected in whole or in part when it is in the best interest of the State;
- That discussions may be conducted with Offerors who submit proposals determined to be reasonably susceptible of being selected for award, but a proposal may be accepted without such discussions;
- That the undersigned may be required to submit best and final offers based on discussion;
- That award, if any, will be made on a firm fixed fee basis to the responsive and responsible offeror who has submitted the most advantageous offer in accordance with the evaluation criteria set forth in this Request for Proposal;
- That by submitting this proposal, the undersigned is declaring that if awarded a contract, the undersigned will comply with all requirements for wages, hours and working conditions in accordance with Section 103-55, Hawaii Revised Statutes; and
- That if awarded a contract, the undersigned hereby commits to a minimum of two consultation sessions with the State.

The undersigned acknowledges receipt of any addendum issued by the Department of Business, Economic Development, and Tourism by recording in the space below the **date** of receipt:

Addendum No. 1 _____

Addendum No. 2 _____

Addendum No. 3 _____

Addendum No. 4 _____

The undersigned hereby certifies that the proposal hereby attached has been carefully checked and is submitted as correct.

Respectfully submitted,

Exact Legal Name of Offeror (company name)

Authorized signature (attach corporate resolution or evidence of authorization to bind)

Title

Date

Street Address

City, STATE, Zip Code

Telephone No.

Mailing Address (if different from street address)

E-mail

6.02 OFFEROR'S LEGAL LICENSE AND IDENTIFICATION NUMBERS

State of Hawaii General Excise Tax (GET) License Number: _____

Federal Taxpayer Identification Number: _____

Type of Organization:

☐ Individual ☐ Partnership ☐ Corporation ☐ Joint Venture

If offeror is a "dba" or a division of a corporation, furnish the exact legal name of the corporation under which the contract, if awarded, will be executed:

State of Incorporation: ☐ Hawaii Other: _____

6.03 PREFERENCES:

The following preferences apply to this solicitation. A detailed discussion of each preference is included in the section entitled "Special Provisions." Indicate which preferences apply.

1. In-state contractor preference: ☐ Yes ☐ No

If yes, indicate State of Hawaii business street address: _____

If yes, attach current (issued within 45 days of bid submittal) tax clearance from the State of Hawaii Department of Taxation. (Note: The bidder may wish to also obtain tax clearance from the Internal Revenue Service at the same time in order to fulfill this requirement if awarded a contract)

2. Tax Adjustments:

Are you an out-of-state business? ☐ Yes ☐ No

Is your organization tax exempt? ☐ Yes ☐ No

3. Reciprocal Preferences:

List your principal place of Business:

Street Address

City, State, Zip Code

Are you registered with the State of Hawaii, Department of Commerce and Consumer Affairs to do business in the State of Hawaii? ☐ Yes ☐ No

6.04 SMALL BUSINESS PROGRAM REPRESENTATIONS

1. The small business eligibility criteria for this solicitation is a firm which has fewer than 500 employees and/or less than seven million dollars (\$7,000,000.00) in average annual receipts.
2. Offeror hereby affirmatively represents that it is a qualified small business concern eligible for award of the contract under the eligibility criteria above.
3. Offeror further represents that the Offeror's average number of employees for the past 12 months and Offeror's annual gross revenue for the preceding fiscal year was reflected below. (Offeror must check and initial one item in each column).

NUMBER OF EMPLOYEES	AVERAGE ANNUAL GROSS REVENUES
<input type="checkbox"/> 15 or fewer	<input type="checkbox"/> \$500,000 or less
<input type="checkbox"/> 16 to 50	<input type="checkbox"/> \$500,001 to \$1 million
<input type="checkbox"/> 51 to 100	<input type="checkbox"/> \$1,000,001 to \$2 million
<input type="checkbox"/> 101 to 250	<input type="checkbox"/> \$2,000,001 to \$3.5 million
<input type="checkbox"/> 251 to 500	<input type="checkbox"/> \$3,500,001 to \$5 million
<input type="checkbox"/> 501 to 750	<input type="checkbox"/> \$5,000,001 to \$10 million
<input type="checkbox"/> 751 to 1,000	<input type="checkbox"/> \$10,000,001 to \$17 million
<input type="checkbox"/> Over 1,000	<input type="checkbox"/> Over \$17 million

CONTRACTOR represents in good faith that it is a small business at the time of this representation and that it meets the definition of a "small business concern" as defined herein.

CONTRACTOR

Signature: _____

By: _____
(Print Name)

Title: _____

Company: _____

Date: _____

(Signed by Offeror)

6.05 SMALL BUSINESS QUALIFICATION QUESTIONNAIRE

1. How many years has your organization been in business under your present business name? _____
2. How many years experience in this field of work has your organization had? _____
3. Show what projects your organization has completed in the past five (5) years that are related to this project:

Name and Address of Project Owner	Description	Contract Amount	Completion Date
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

4. Have you ever failed to complete any work awarded to you? _____
If so, please provide a brief description, including when and where it took place and why work was not completed.

5. Has any officer or partner of your organization in the past five (5) years been an officer, partner or individual of some other organization that failed to complete a contract? _____
If so, state name of individual, other organization and reason therefor:

6. For what entities within the State of Hawaii other than government agencies have you performed work, and to whom do you refer?

[illegible]

7. For what State departments and county agencies of the State of Hawaii have you performed work, and to whom do you refer?

[illegible]

8. Have you performed work for the U.S. Government? _____
If so, list and to whom do you refer?

[illegible]

9. Have you ever performed any work for any other governmental agencies outside the State

of Hawaii? _____
If so, list and to whom do you refer?

Agency	Project Description	Contact Person	Phone

10. List a minimum of three references for work performed similar to this project.

Company	Project Description	Contact Person	Phone

11. What is the professional or project experience of the principal individuals being assigned to this project?

Individual's Name	Position or Title	Years Experience	Type of Work

6.06 CORPORATE RESOLUTION

Attach here: Corporate resolution or written authorization of offeror's representative to sign this proposal.

**SECTION SEVEN
ATTACHMENTS**

ATTACHMENT 1:	OFFER FORM, OF-1
ATTACHMENT 2:	OFFER FORM, OF-2
ATTACHMENT 3:	CERTIFICATE FOR FINAL PAYMENT (SPO FORM-22)
ATTACHMENT 4:	GENERAL CONDITIONS

Attachment 1
OFFER FORM, OF-1

Department of Business, Economic Development, and Tourism
Administrative Services Office / Contracts
No. 1 Capitol District
250 So. Hotel Street, 5th Floor, Room 504
Honolulu, Hawaii 96813

Dear Ms. Eileen Harada:

The undersigned has carefully read and understands the terms and conditions specified in the Specifications and Special Provisions attached hereto, and in the General Conditions, Form 4/15/96, by reference made a part hereof and available upon request; and hereby submits the following offer to perform the work specified herein, all in accordance with the true intent and meaning thereof. The undersigned further understands and agrees that by submitting this offer, 1) he/she is declaring his/her offer is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contracts, and 2) he/she is certifying that the price(s) submitted was (were) independently arrived at without collusion.

The undersigned represents that it is: **(Check $\sqrt{\hspace{0.5em}}$ one only)**

- ☐ A **Hawaii business** incorporated or organized under the laws of the State of Hawaii; **OR**
- ☐ A **Compliant Non-Hawaii business** not incorporated or organized under the laws of the State of Hawaii, is or shall be registered at the State of Hawaii, Department of Commerce and Consumer Affairs Business Registration Division (DCCA-BREG) to do business in the State of Hawaii.
- State of incorporation: _____

Offeror is:

☐ Sole Proprietor ☐ Partnership ☐ Corporation ☐ Joint Venture ☐ Other _____

Federal I.D. No.: _____

Hawaii General Excise Tax License I.D. No.: _____

Payment address (other than street address below): _____

City, State, Zip Code: _____

Business address (street address): _____

City, State, Zip Code: _____

Respectfully submitted:

Date

(x) _____
Authorized (Original) Signature

Telephone No.:

Name and Title (Please Type or Print)

Fax No.

* _____

E-mail Address

Exact Legal Name of Company (Offeror)

*If Offeror is a "dba" or a "division" of a corporation, furnish the exact legal name of the corporation under which the awarded contract will be executed.

OFFER FORM

OF-1

Revised 12/27/04

Attachment 2
OFFER FORM, OF-2

Total contract cost for effectively maintaining the Foreign-Trade Zone No. 9 HFTZIPS IBM AS/400 and Series i5 systems and software **on an annual basis**.

Worksheet

Task:

Price:

Provide on-going application and systems maintenance for the HFTZIPS and its related modules and operating features.

\$ _____

Provide troubleshooting and maintenance of the IBM AS/400 and Series i5 system software and hardware to include network peripheral equipment not covered under any existing State maintenance contract.

\$ _____

Provide installation and configuration of any replacement parts or software updates and upgrades.

\$ _____

Ensure all existing maintenance contracts are up-to-date and enforced.

\$ _____

Total: \$ _____

(Cost based on a minimum of 12 hours of service per month)

Total Price from Worksheet Above:

\$ _____

Note: Pricing shall include labor, materials, supplies, all applicable taxes, and any other costs incurred to provide the specified services.

Offer _____
Company Name

STATE OF HAWAII
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM
FOREIGN-TRADE ZONE

HFTZIPS MAINTENANCE SERVICE

SOLICITATION No. RFP-FTZ2009-01

ATTACHMENT 3 – CERTIFICATE FOR FINAL PAYMENT (SPO FORM 22)

Reference: _____
(Contract Number) _____ (IFB/RFP Number)

1. Chapter 383, HRS, Hawaii Employment Security Law – Unemployment Insurance;
2. Chapter 386, HRS, Worker's Compensation Law;
3. Chapter 392, HRS, Temporary Disability Insurance;
4. Chapter 393, HRS, Prepaid Health Care Act; and

Moreover, _____
(Company Name)
acknowledges that making a false statement shall cause its suspension and may cause its
debarment from future awards of contracts.

Date: _____

STATE OF HAWAII
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM
FOREIGN-TRADE ZONE

HFTZIPS MAINTENANCE SERVICE

SOLICITATION No. RFP-FTZ2009-01

ATTACHMENT 4 – GENERAL CONDITIONS

GENERAL CONDITIONS

Table of Contents

Page(s)

1.	Coordination of Services by the STATE	2
2.	Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.....	2
3.	Personnel Requirements	3
4.	Nondiscrimination	3
5.	Conflicts of Interest	3
6.	Subcontracts and Assignments	3
7.	Indemnification and Defense	4
8.	Cost of Litigation.....	4
9.	Liquidated Damages	4
10.	STATE'S Right of Offset.....	4
11.	Disputes	4
12.	Suspension of Contract	4
13.	Termination for Default.....	5
14.	Termination for Convenience	6
15.	Claims Based on the Agency Procurement Officer's Actions or Omissions.....	8
16.	Costs and Expenses	8
17.	Payment Procedures; Final Payment; Tax Clearance	9
18.	Federal Funds	9
19.	Modifications of Contract.....	9
20.	Change Order.....	10
21.	Price Adjustment	11
22.	Variation in Quantity for Definite Quantity Contracts	11
23.	Changes in Cost-Reimbursement Contract.....	11
24.	Confidentiality of Material	12
25.	Publicity.....	12
26.	Ownership Rights and Copyright	12
27.	Liens and Warranties	12
28.	Audit of Books and Records of the CONTRACTOR.....	13
29.	Cost or Pricing Data	13
30.	Audit of Cost or Pricing Data	13
31.	Records Retention.....	13
32.	Antitrust Claims.....	13
33.	Patented Articles.....	13
34.	Governing Law	14
35.	Compliance with Laws	14
36.	Conflict between General Conditions and Procurement Rules	14
37.	Entire Contract.....	14
38.	Severability	14
39.	Waiver	14
40.	Pollution Control	14
41.	Campaign Contributions.....	14
42.	Confidentiality of Personal Information.....	14

GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
 - a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.
 - b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
 - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.
 - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.
 - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.
 - f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

- g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.

3. Personnel Requirements.

- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
- b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

4. Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.

6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.

- a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:

- (1) The Assignee assumes all of the CONTRACTOR'S obligations;
- (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
- (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.

- b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the

Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.

- c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.
 - d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.
- 7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.
 - 8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
 - 9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.
 - 10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.
 - 11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.
 - 12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.
 - a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified

period not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:

- (1) Cancel the stop performance order; or
 - (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.
- b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:
- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
 - (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.
- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
- d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

- a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and

necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.

- c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.
- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. Termination for Convenience.

- a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
- b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.

- c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:

- (1) Any completed goods or work product; and
- (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the STATE has breached the Contract by exercise of the termination for convenience provision.

- d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.
- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.
- (3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
 - (A) Contract prices for goods or services accepted under the Contract;
 - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
 - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);
 - (D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the

total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

- (4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) of the Procurement Rules.

15. Claims Based on the Agency Procurement Officer's Actions or Omissions.

- a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

- (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:

- (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
- (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
- (C) Within such further time as may be allowed by the Agency procurement officer in writing.

- (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;

- (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and

- (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.

- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.

- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:

- a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.
- b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
- c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures; Final Payment; Tax Clearance.

- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
- b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
- c. Prompt payment.
 - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
 - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.

18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.

19. Modifications of Contract.

- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.

- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:
 - (A) Changes in the work within the scope of the Contract; and
 - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
 - d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.
 - e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
 - f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
 - g. CPO approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 or ten per cent (10%) of the initial contract price, whichever increase is higher, must receive the prior approval of the CPO.
 - h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.
 - i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.
20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
 - (2) Method of delivery; or
 - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By

proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.

- b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
- c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
- d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
 - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - (2) By unit prices specified in the Contract or subsequently agreed upon;
 - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
 - (4) In such other manner as the parties may mutually agree; or
 - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
 - (1) Description of performance (Attachment 1);
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
 - (3) Place of performance of services;

- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
 - (5) Method of shipment or packing of supplies; or
 - (6) Place of delivery.
 - b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
 - c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
 - d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
 - e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.
24. Confidentiality of Material.
- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
 - b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.
25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.
26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.
27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:
- a. The cost or pricing data, and
 - b. A state contract, including subcontracts, other than a firm fixed-price contract.
29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.
- If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.
30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.
31. Records Retention.
- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
 - (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.
32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.
33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-205.5, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.
42. Confidentiality of Personal Information.
- a. Definitions.
- "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:
- (1) Social security number;
 - (2) Driver's license number or Hawaii identification card number; or

- (3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

"Technological safeguards" means the technology and the policy and procedures for use of the technology to protect and control access to personal information.

b. Confidentiality of Material.

- (1) All material given to or made available to the CONTRACTOR by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the STATE.
- (2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.
- (3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.
- (4) CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.
- (5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.
- (6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

c. Security Awareness Training and Confidentiality Agreements.

- (1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.
- (2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:
 - (A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;
 - (B) Access to the personal information will be allowed only as necessary to perform the Contract; and
 - (C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

d. Termination for Cause. In addition to any other remedies provided for by this Contract, if the STATE learns of a material breach by CONTRACTOR of this paragraph by CONTRACTOR, the STATE may at its sole discretion:

- (1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or
- (2) Immediately terminate this Contract.

In either instance, the CONTRACTOR and the STATE shall follow chapter 487N, HRS, with respect to notification of a security breach of personal information.

e. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.